

Domingo, David

From: Bellovary, Chris
Sent: Wednesday, February 01, 2017 2:24 PM
To: Mayor Johnson; Steve Zollinger
Cc: Jared Gunderson; Domingo, David
Subject: Re: Notice of Intent to File Administrative Complaint for Violation of the Clean Water Act (FRE 408)

Confidential - Rule 408 Settlement Communication

Mayor Johnson,

Thank you for contacting me for purposes of setting a meeting to discuss the violations of the Clean Water Act at the City of Driggs Wastewater Treatment Facility. Of the times you proposed, David and I are available on Monday, February 6 at 10 am MST (9 am PST). I am setting aside an hour for the initial call, which is generally more than sufficient. After arrangements have been made for your end of the call, please let me know the phone number I should call and who will be taking part in the conversation.

On the EPA's end of the call, I will be on the call as will David Domingo. In regards to my role in the matter, I can explain the process and procedure, and the terms under which EPA will be willing to settle the case. To encourage a frank and open dialogue, this call will be treated as settlement confidential (per [Federal Rule of Evidence 408](#)). To protect that confidentiality, the call will need to be limited to representatives from the EPA and representatives for the City of Driggs.

My understanding is that both sides anticipate that this case will likely be resolved through settlement rather than litigation. If that is a correct assessment, much of the time on this call will likely be focused on what it will take to bring the City's wastewater treatment plant back into compliance with its discharge permit and how to ensure that the facility remains in compliance.

If Mr. Gunderson has any technical questions in regards to what information will be most helpful to prepare for the meeting, he can contact David at 206-553-0531. Similarly, if you or Mr. Zollinger have any questions prior to the meeting, please feel free to have Mr. Zollinger contact me, either by email or by phone at the number below.

Thank you Mayor Johnson. David and I look forward to working with you and your staff to resolve this matter.

Sincerely,

Chris Bellovary

Chris Bellovary
U.S. EPA - Region 10
Assistant Regional Counsel
Direct Line: 206-553-2723



From: Mayor Johnson [mailto:mayorjohnson@driggsidaho.org]
Sent: Wednesday, February 01, 2017 11:28 AM
To: Domingo, David <Domingo.David@epa.gov>
Cc: Jared Gunderson <jgunderson@driggsidaho.org>; Steve Zollinger <stephenz@rexburg.org>; Bellovary, Chris <Bellovary.Chris@epa.gov>
Subject: Re: Notice of Intent to File Administrative Complaint for Violation of the Clean Water Act

David Domingo and Chris Bellovary,

This message is to acknowledge receipt of your letter dated Monday, January 30, 2017, and to express the desire by the City of Driggs to work with you toward a settlement and resolution within the 90 day time period specified.

From your letter I understand that the next step is for us to set up an initial meeting with Mr. Bellovary. As a small city with limited resources we'd prefer to conduct as much of this as possible via phone and/or email, thus avoiding the cost of a trip to Seattle.

To this end I propose the following dates for the initial call. All times are Mountain Standard Time - one hour ahead of Pacific time.

- Friday 2/3 at 11am
- Monday 2/6 at 10am
- Wednesday 2/8 at 10:30am

Does one of these time slots work for you gentlemen?

I look forward to your response.

Sincerely,

Mayor Hyrum Johnson,

City of Driggs

60 South Main Street

Driggs, Idaho 83422

www.driggs.govoffice.com

facebook.com/DriggsIdaho

208-354-2362 (phone)

208-354-8522 (fax)

***Remember that all communications can be obtained or shared pursuant to the state open records law Idaho Code Ann. Secs. 9-337 to 9-350

On Mon, Jan 30, 2017 at 3:30 PM, Domingo, David <Domingo.David@epa.gov> wrote:



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OFFICE OF
COMPLIANCE AND ENFORCEMENT

The Honorable Hyrum Johnson

Mayor, City of Driggs, Idaho
mayorjohnson@driggsidaho.org

Re: Notice of Intent to File Administrative Complaint for Violations of the Clean Water Act
Opportunity to Confer Prior to Filing

Dear Mayor Johnson,

The U.S. Environmental Protection Agency (EPA) has documented violations of the Clean Water Act at the City of Driggs Wastewater Treatment Facility located at 1250 West Bates Road, Driggs, Idaho. A list of the violations is attached. The purpose of this notice is to inform you that EPA is prepared to initiate an enforcement action for these violations and to offer you the opportunity to discuss this matter with EPA prior to the filing of a complaint.

Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 40 C.F.R. Part 19 authorize EPA to assess administrative penalties for violations of the Clean Water Act of up to \$20,965 per day per violation or to bring a civil action in federal district court seeking civil penalties of up to \$52,414 per day for each violation. Under the terms of Section 309, EPA must consider the following factors in determining the amount of penalty it will seek: the nature, circumstances, extent, and gravity of the violation(s); ability to pay; any prior history of such violations; the degree of culpability; economic benefit or savings (if any) resulting from the violation; and such other matters as justice may require.

Please refer to EPA's *Interim Clean Water Act Settlement Penalty Policy* for guidance on appropriate penalties in settlement of civil administrative and judicial actions at <http://www2.epa.gov/enforcement/interim-clean-water-act-settlement-penalty-policy>.

In general, EPA favors pre-filing discussions, which help ensure that we have all relevant information and may lead to resolution that avoids the time and expense of litigation. If we are able to reach a settlement, we would resolve the case with an administrative consent agreement and final order, and EPA would not file a complaint. Once a consent agreement and final order is signed by all parties, EPA generally issues a press release announcing the settlement.

If the City and EPA do not reach a settlement **within 90 days of this notice**, EPA will either file an administrative complaint and the case will be assigned to an administrative law judge or refer the matter to the Department of Justice for filing in federal district court. EPA reserves the right to seek the maximum allowable penalty in litigation of this case should the City and EPA fail to reach a settlement in the time period allotted.

To reach settlement within 90 days, we will need to begin pre-filing negotiations within 30 days. If you wish to set up an initial meeting to discuss this matter, please contact Chris Bellovary in the Office of Regional Counsel at (206) 553-2723 **within 14 days of this notice**. EPA is willing to meet with you at our Seattle office or by conference call. If we do not hear from you within 14 days, EPA intends to initiate formal enforcement action unilaterally.

Thank you for your prompt attention to this important matter.

Sincerely,

/David Domingo/

David Domingo

Attachment:

1. List of Violations

cc: Chris Bellovary
Office of Regional Counsel